

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016030075

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On March 17, 2016, Tehachapi Unified School District filed a first request to continue the dates in this matter with the Office of Administrative Hearings. The current date set for hearing is April 21, 2016. The motion was supported by counsel's declaration that he would be on paternity leave for two weeks beginning on or about April 21, 2016.

Student's counsel sent OAH a letter on March 14, 2016. The letter opposed a continuance on the grounds there are other attorneys in the firm. The letter was not supported by a declaration. There was no reason stated for the failure to respond to a March 11, 2016 email request to meet and confer, no suggestion of any possible prejudice and did not propose any alternative dates.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Counsel's unavailability for two weeks beginning on or about April 21, 2016

is good cause for a continuance of less than 90 days from the initial hearing date. The request to continue the prehearing conference and due process hearing is granted.

The mediation now set for April 4, 2016 remains on calendar. The prehearing conference and due process hearing dates are vacated and will be set as follows:

Prehearing Conference:	June 20, 2016 at 1:00 p.m.
Due Process Hearing:	June 28 and 29, 2016, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: March 24, 2016

DocuSigned by:

Marian H. Tully

MARIAN H. TULLY

Administrative Law Judge
Office of Administrative Hearings